



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[Docket Number USCG-2023-0073]

RIN 1625-AA00

Safety Zone; South Fork Wind Farm Project Area, Outer Continental Shelf, Lease

OCS-A 0517, Offshore Rhode Island, Atlantic Ocean

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing 13 temporary 500-meter safety zones around the construction of 12 wind turbine generators (WTGs) and one offshore substation (OSS) located in the South Fork Wind Farm (SFWF) project area within federal waters on the Outer Continental Shelf (OCS), specifically, in the Bureau of Ocean Energy Management (BOEM) Renewable Energy Lease Area OCS-A 0517, approximately 16 nautical miles (NM) southeast of Block Island, Rhode Island, and 30 NM east of Montauk Point, New York. This action is necessary to provide for the safety of life, property, and the environment during the anticipated construction of each facility's monopile type foundation and subsequent installation of the WTGs turbines and OSS platform from May 1, 2023, to December 31, 2023. When enforced, only attending vessels and those vessels specifically authorized by the First Coast Guard District Commander or a designated representative are permitted to enter or remain in the safety zones.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], through 11:59 p.m. on December 31,

2023. For the purposes of enforcement, actual notice will be used from May 1, 2023, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0073 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Mr. Craig Lapiejko, Waterways Management, at Coast Guard First District, telephone 617-603-8592, e-mail craig.d.lapiejko@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BOEM	Bureau of Ocean Energy Management
CFR	Code of Federal Regulations
DD	Degrees Decimal
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
OCS	Outer Continental Shelf
OSS	Offshore Substation
NAD 83	North American Datum of 1983
NM	Nautical Mile
§	Section
SFWF	South Fork Wind Farm
U.S.C.	United States Code
WTG	Wind Turbine Generator

II. Background, Purpose, and Legal Basis

On October 20, 2022, Orsted Offshore North America, an offshore wind farm developer, notified the Coast Guard that they plan to begin construction in May 2023 of facilities in the SFWF project area within federal waters on the OCS, specifically in the BOEM Renewable Energy Lease Area OCS-A 0517, approximately 16 NM southeast of Block Island, Rhode Island, and 30 NM east of Montauk Point, New York.

After determining that establishment of safety zones was necessary to provide for the safety of life, property, and the environment during the anticipated construction of the

structures, on March 6, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Safety Zone; South Fork Wind Farm Project Area, Outer Continental Shelf, Lease OCS-A 0517, Offshore Rhode Island, Atlantic Ocean” (88 FR 13745). There we explained the basis for the NPRM and invited comments on our proposed regulatory action related to the establishment of safety zones around the construction of 12 WTGs and one OSS located in the SFWF project area. On March 15, 2023, while the comment period was open, the Coast Guard published a NPRM correcting amendment titled “Safety Zone; South Fork Wind Farm Project Area, Outer Continental Shelf, Lease OCS-A 0517, Offshore Rhode Island, Atlantic Ocean, Corrections” (88 FR 15939), where we corrected a set of coordinates and four labeling plot locations. In total, 11 comments were received during the comment period that ended April 5, 2023.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. The comment period for the NPRM associated with the SFWF project area ended on April 5, 2023, and the project is scheduled to begin on May 1, 2023. Thus, there is insufficient time to allow for 30-days before the rule becomes effective before the need to enforce this safety zone arises on May 1, 2023. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety risks associated with the extremely complex and unusually hazardous construction of these OCS facilities including hydraulic pile driving hammer operations, heavy lift operations, overhead cutting operations, potential falling debris, increased vessel traffic, and stationary barges in close proximity to the facilities and each other.

Based on these circumstances, the First Coast Guard District Commander has determined that establishment of 13 safety zones through rulemaking is warranted to ensure the safety of life, property, and the environment within a 500-meter radius of each of the 13 facilities during their construction.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority provided in 14 U.S.C. 544, 43 U.S.C. 1333, and Department of Homeland Security (DHS) Delegation No. 00170.1, Revision No. 01.3. As an implementing regulation of this authority, 33 CFR part 147 permits the establishment of safety zones for non-mineral energy resource permanent or temporary structures located on the OCS for the purpose of protecting life and property on the facilities, appurtenances and attending vessels, and on the adjacent waters within the safety zone (see 33 CFR 147.10). Accordingly, a safety zone established under 33 CFR part 147 may also include provisions to restrict, prevent, or control certain activities, including access by vessels or persons to maintain safety of life, property, and the environment.

IV. Discussion of Comments, Changes, and the Rule

As noted above, the Coast Guard received 11 public comments on our NPRM published March 6, 2023. Five of the 11 comments were supportive of the 13 temporary 500-meter safety zones and six commenters were opposed. Those opposing the NPRM communicated this opposition relative to wind farm construction in general and not necessarily in regard to our proposed rule and the enforcement of safety zones around this construction. We provide a detail discussion of each comment below.

Four commenters agreed with our proposed rule to create 13 temporary 500-meter safety zones during construction of these OCS facilities to protect life, property, and the environment.

One commenter generally supported the proposed rule and offered three additional recommendations for the Coast Guard to consider.

First, the commenter recommended we extend the safety zones 500-meters from the outer perimeter of attending, primary construction vessels once those vessels have achieved stationary position to conduct construction activities vice from the center point

of the construction site. Although the Coast Guard could maximize the area of the safety zone by using our complete authorities within 33 CFR part 147, we believe that enforcement of the 500-meter zone from the center point of construction as a fixed geographic position is most appropriate for this particular offshore construction project. Using the center point of construction to base the location of the safety zone ensures there is a balance between ensuring safety and reducing impact on vessel transit.

Second, the commenter recommended we expand the definition of “designated representative” to include an appropriate employee or contractor of Orsted or South Fork Wind, LLC in order to facilitate navigation around and through the safety zones and enhance effective communications when safety zones are enforced. The Coast Guard believes that the definition of “designated representative” as cited in our proposed rule should be maintained. Based on the particular details of this offshore construction project including the short duration of the enforcement period (approximately 48 hours during active construction), the more distant offshore location which sees less vessel traffic, and the types of large vessels that are most likely to navigate in the vicinity of the safety zones (commercial shipping, fishing, and tugs with tows), the Coast Guard finds no compelling need to broaden representative designation or the authority to permit passage through and around the enforced safety zone. Maintaining designation to Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the First Coast Guard District Commander in the enforcement of the safety zones will ensure consistent application.

Finally, the commenter suggested adding verbiage to indicate the safety zone would be enforceable once any construction vessel has achieved a stationary position. Although the Coast Guard could add this language based on our authorities within 33 CFR part 147, for this particular offshore construction project, the Coast Guard believes

that an enforcement period correlated to a regularly updated date range published in the LNM is the more easily interpreted, reliable, and enforceable risk mitigation. Utilizing the stationary positioning of the construction vessel as the triggering event for enforcement also may create confusion for the impacted mariner because it could be difficult to discern which vessel is the “construction vessel” or if it is in fact stationary. Therefore, the Coast Guard intends to alleviate this ambiguity by utilizing time and date-based notifications of enforcement that correspond to the progression of construction.

Of the six opposing comments, three commenters expressed concerns about wind farm construction projects and stated their general opposition to all similar construction projects in the region. The Coast Guard acknowledges these comments and concerns. Coast Guard authorities direct us to assess the potential safety risks associated with such complex and unusually hazardous construction projects and require establishment of the safety zones to ensure the safety of life, property, and the environment.

One expressed a concern that a 500-meter temporary safety zone was too large. The Coast Guard disagrees. As we stated in our proposed rule, the construction of these OCS facilities presents many unusually hazardous conditions including hydraulic pile driving hammer operations, heavy lift operations, overhead cutting operations, and potential falling debris that may impact the area surrounding the construction site up to 500 meters. Additionally, the developer’s construction plan describes increased vessel traffic and stationary barges operating in close proximity to the facilities and each other. Therefore, the Coast Guard believes that for this particular offshore project, a 500-meter temporary safety zone during the active construction of each structure is necessary to protect life, property, and the environment without posing significant impact on vessel transit.

Two commenters expressed their concern that the proposed safety zones will force vessels to transit around the area rather than by direct routes, leading to increased

fuel consumption and risk in the instance of severe weather. The Coast Guard disagrees. Although the rule is effective, and enforceable, through December 31, 2023, each of the 13 temporary safety zones will be enforced individually as construction progresses from one structure location to the next with each lasting only approximately 48 hours. The Coast Guard believes that due to the short and individual duration of enforcement, this action will pose little impact on their voyage or the directness of their route. Additionally, vessels will be able to request permission to transit through the safety zone. Such requests will be considered on a case by-case basis and may be authorized by the First Coast Guard District Commander or a designated representative.

One commenter expressed their concern that these 13 temporary 500-meter safety zones would become permanent. The Coast Guard is establishing these 13 safety zones to be temporary in nature and only effective and enforceable through December 31, 2023. If the project is completed before December 31, 2023, enforcement of the safety zones will be suspended, and notice given via Local Notice to Mariners. Any desire by the Coast Guard to create permanent safety zones would require additional notice and comment rulemaking.

After considering the comments discussed above, the Coast Guard determined that no additional changes should be made to the regulatory text based on these comments. As written, the Coast Guard believes that the rule ensures consistency, sufficient notice, and improved safety while minimizing impact on vessel transit.

Due to previously discovered errors and changes in the scheduling, there are five changes to the regulatory text of this rule from the proposed rule in the NPRM. On March 15, 2023, the Coast Guard published a NPRM correcting amendment¹ where we discussed the five edits to the position table, including four labeling plot location errors

¹ Safety Zone; South Fork Wind Farm Project Area, Outer Continental Shelf, Lease OCS-A 0517, Offshore Rhode Island, Atlantic Ocean, Corrections (88 FR 15939).

and one error of the coordinates describing a labeling plot location. Specifically, we corrected the four labeling plot location errors by replacing AN07, AM09, AN10, and AP10 with AM05, AN05, AP05, and AN08, and corrected the coordinates describing AN06.

This rule establishes 13 temporary 500-meter safety zones around the construction of 12 WTGs and one OSS on the OCS from May 1, 2023, through 11:59 p.m. on December 31, 2023.

The 13 temporary safety zones will be enforced individually for a period lasting approximately 48 hours as construction progresses from one structure location to the next. The Coast Guard will make notice of each enforcement period via the Local Notice to Mariners and issue a Broadcast Notice to Mariners via marine channel 16 (VHF-FM) as soon as practicable in response to an emergency or hazardous condition. The Coast Guard is publishing this rulemaking to be effective, and enforceable, through December 31, 2023, to encompass any construction delays due to weather or other unforeseen circumstances. If the project is completed before December 31, 2023, enforcement of the safety zones will be suspended, and notice given via Local Notice to Mariners.

Additional information about the construction process of the SFWF can be found at <https://www.boem.gov/renewable-energy/state-activities/south-fork>.

The 13 temporary 500-meter safety zones around the construction of 12 WTGs and one OSS are in the SFWF project area within federal waters on the OCS, specifically in the BOEM Renewable Energy Lease Area OCS-A 0517, approximately 16NM southeast of Block Island, Rhode Island, and 30 NM east of Montauk Point, New York.

The positions of each individual safety zone will be referred to using a unique alpha-numeric naming convention outlined in the “Rhode Island and Massachusetts

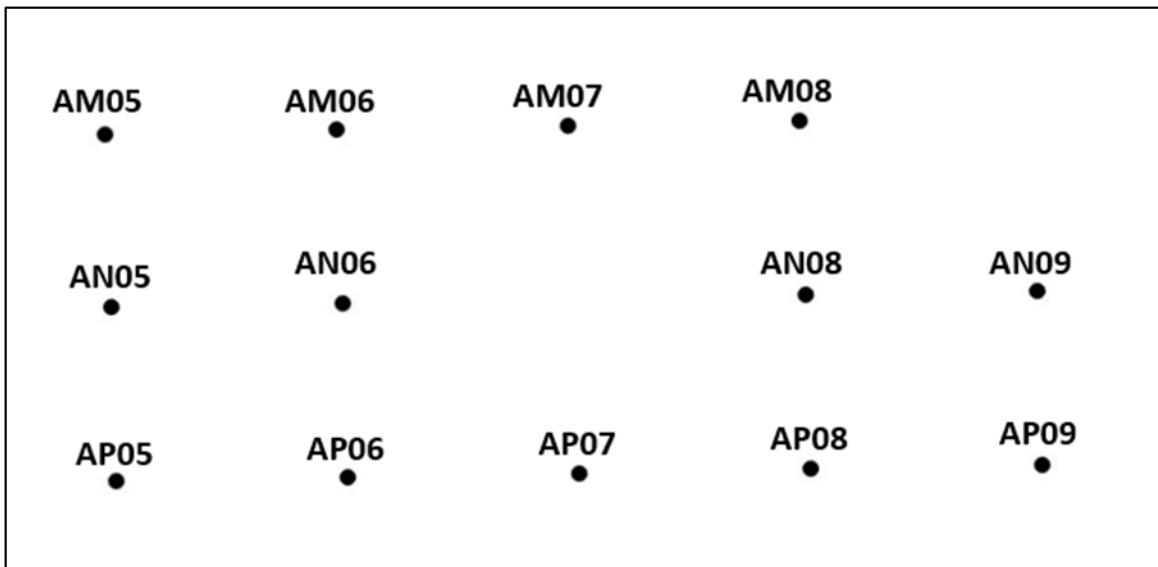
Structure Labeling Plot (West)².

Aligning with authorities under 33 CFR 147.15, the safety zones will include the area within 500-meters of the center point of the positions provided in the updated table below expressed in Decimal Degrees (DD) based on North American Datum 1983 (NAD 83).

Name	Facility Type	Latitude	Longitude
AM05	WTG	N 41.10879493	W -71.19110374
AM06	WTG	N 41.10921219	W -71.16906236
AM07	WTG	N 41.10962524	W -71.14702052
AM08	WTG	N 41.11003408	W -71.12497822
AN05	WTG	N 41.09212418	W -71.19054951
AN06	WTG	N 41.09195639	W -71.16788437
AN08	WTG	N 41.09336261	W -71.12444068
AN09	WTG	N 41.093767	W -71.1024035
AP05	WTG	N 41.07545338	W -71.18999573
AP06	OSS	N 41.07587016	W -71.16796548
AP07	WTG	N 41.07628273	W -71.14593476
AP08	WTG	N 41.07669109	W -71.12390359
AP09	WTG	N 41.07709524	W -71.10187197

The positions of the 13 safety zones are shown on the updated chartlet below. For scaling purposes, there is approximately one NM spacing between each position.

² The Rhode Island and Massachusetts Structure Labeling Plot (West) is an attachment to the Conditions of Construction and Operations Plan Approval Lease Number OCS-A 0517 (boem.gov) and can be found at <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/SFWF-COP-Terms-and-Conditions.pdf>.



(Chartlet showing turbine positions using unique alpha-numeric naming convention.)

When enforced, no unauthorized vessel or person will be permitted to enter the safety zone without obtaining permission from the First Coast Guard District Commander or a designated representative. Requests for entry into the safety zone will be considered and approved on a case-by-case basis. Persons or vessels seeking to enter the safety zone must request authorization from the First Coast Guard District Commander or designated representative via VHF-FM channel 16 or by phone at 866-842-1560 (First Coast Guard District Command Center). If permission is granted, all persons and vessels must comply with the instructions of the First Coast Guard District Commander or designated representative.

The regulatory text appears at the end of this document.

IV. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. A summary of our analyses based on these statutes and Executive orders follows.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB).

Aligning with 33 CFR 147.15, the safety zones established will extend to a maximum distance of 500-meters around the OCS facility measured from its center point. Vessel traffic will be able to safely transit around the safety zones, which will impact a small, designated area in the Atlantic Ocean, without significant impediment to their overall voyage. This safety zone is necessary to provide for the safety of life, property, and the environment during the construction of each structure, in accordance with Coast Guard maritime safety missions and the First Coast Guard District Commander’s finding.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule may affect owners or operators of vessels intending to transit or anchor in the SFWF, some of which might be small entities. However, these safety zones will not have a significant economic impact on a substantial number of these entities because they are temporarily enforced, allow for deviation requests, and do not impact vessel transit significantly. Regarding the enforcement period, although these safety zones will be in effect from May 1, 2023, through December 31, 2023, vessels would only be prohibited from the regulated zone during periods of actual construction activity in

correspondence to the period of enforcement. We expect the enforcement period at each location to last approximately 48 hours as construction progresses from one structure location to the next throughout each of the two phases. Additionally, vessel traffic could pass safely around each safety zone using an alternate route. Use of an alternate route likely will cause minimal delay for the vessel in reaching their destination depending on other traffic in the area and vessel speed. Vessels will also be able to request deviation from this rule to transit through a safety zone. Such requests will be considered on a case-by-case basis and may be authorized by the First Coast Guard District Commander or a designated representative. For these reasons, the Coast Guard expects any impact of this rulemaking establishing a temporary safety zone around these OCS facilities to be minimal and have no significant economic impact on small entities.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the potential effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have

determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone around an OCS facility to protect life, property, and the marine environment. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (waters).

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 544; 43 U.S.C. 1333; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 147.T01-0073 to read as follows:

§ 147.T01-0073 Safety Zones; South Fork Wind Farm Project Area, Outer Continental Shelf, Lease OCS-A 0517, Offshore Rhode Island, Atlantic Ocean.

(a) *Description.* The area within 500-meters of the center point of the positions (NAD83) provided in the following table is a safety zone:

Table 1 to Paragraph (a)

Name	Facility Type	Latitude	Longitude
AM05	WTG	N 41.10879493	W -71.19110374
AM06	WTG	N 41.10921219	W -71.16906236
AM07	WTG	N 41.10962524	W -71.14702052
AM08	WTG	N 41.11003408	W -71.12497822
AN05	WTG	N 41.09212418	W -71.19054951
AN06	WTG	N 41.09195639	W -71.16788437
AN08	WTG	N 41.09336261	W -71.12444068
AN09	WTG	N 41.093767	W -71.1024035
AP05	WTG	N 41.07545338	W -71.18999573
AP06	OSS	N 41.07587016	W -71.16796548
AP07	WTG	N 41.07628273	W -71.14593476
AP08	WTG	N 41.07669109	W -71.12390359
AP09	WTG	N 41.07709524	W -71.10187197

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the First Coast Guard District Commander in the enforcement of the safety zones.

(c) *Regulations.* No vessel may enter or remain in this safety zone except for the following:

- (1) An attending vessel as defined in § 147.20; and
- (2) A vessel authorized by the First Coast Guard District Commander or a

designated representative.

(d) *Request for permission.* Persons or vessels seeking to enter the safety zone must request authorization from the First Coast Guard District Commander or a designated representative. If permission is granted, all persons and vessels must comply with lawful instructions of the First Coast Guard District Commander or designated representative via VHF-FM channel 16 or by phone at 866-842-1560 (First Coast Guard District Command Center).

(e) *Effectiveness and enforcement periods.* This section is in effect from May 1, 2023, through 11:59 p.m. on December 31, 2023. But it will only be enforced during active construction or other instances which may cause a hazard to navigation deemed necessary by the First Coast Guard District Commander. The First Coast Guard District Commander will make notification of the exact dates and times in advance of each enforcement period for the locations in paragraph (a) of this section to the local maritime community through the Local Notice to Mariners and will issue a Broadcast Notice to Mariners via marine channel 16 (VHF-FM) as soon as practicable in response to an emergency. If the project is completed before December 31, 2023, enforcement of the safety zones will be suspended, and notice given via Local Notice to Mariners. The First Coast Guard District Local Notice to Mariners can be found at:

<https://www.navcen.uscg.gov>.

Dated: April 27, 2023.

J. W. Mauger

Rear Admiral, U.S. Coast Guard

Commander, First Coast Guard District.

[FR Doc. 2023-09295 Filed: 4/27/2023 4:15 pm; Publication Date: 5/2/2023]